

(2015) 09 AHC CK 0177
In the Allahabad High Court
Case No : Special Appeal No. 479 of 2015

Sushila and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 104
Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117, 122B, 122-B, 122B(4A), 122B(4F)

Citation : (2015) 9 ADJ 589 : (2015) 6 AWC 5960

Hon'ble Judges : D.Y. Chandrachud, C.J. and Narayan Shukla, J.

Bench : Division Bench

Advocate : Rajeiu Kumar Tripathi, for the Appellant; Azad Khan, for the Respondent

Final Decision : Allowed

Judgement

Dr. D.Y. Chandrachud, C.J.

1. This appeal has arisen from a judgment and order of the learned Single Judge dated 25 August 2015 by which a writ petition filed by the appellants to question the legality of orders passed by the Sub Divisional Officer¹, Rudauli, district Faizabad on 26 February 2014 and 13 January 2015 has been dismissed. The view of the learned Single Judge is a remedy of a revision would be available under subsection (4A) of Section 122B of the U.P. Zamindari Abolition and Land Reforms Act, 1950² against an order passed under sub-section (4F). Hence, the writ petition was not entertained on the ground of the availability of alternate statutory remedy.

2. The appellants claim to be in cultivatory possession and to be entitled to the benefit of Section 122B(4F) . They claim to be in possession prior to 13 May 2007 which is the cut off date prescribed under Section 122B(4F) . On 29 January 2013, the SDO granted to the appellants the benefit of the provisions of

Section 122B(4F) and directed the revenue authorities to make consequential entries in the revenue record. The names of the appellants were entered in the revenue record as Bhumidhar with non transferable rights. Subsequently, an application was filed for recall of the order dated 29 January 2013. The SDO initially kept the order dated 29 January 2013 in abeyance, by an order dated 26 February 2014 and eventually by a final order dated 13 January 2015 set aside the earlier order. The SDO directed that the land in question be recorded as Banjar land in favour of the Gram Sabha. Aggrieved, the appellants filed a writ petition under Article 226 to challenge the orders passed by the SDO on 26 February 2014 and 13 January 2015.

3. The learned Single Judge dismissed the writ petition on the ground that a remedy of a revision was available under Section 122B(4A) .

4. Sub-sections (1), (2), (3), (4) and (4-A) of Section 122B of the Act read as follows:

"(1) Where any property vested under the provisions of this Act in a Gaon Sabha or a local authority is damaged or misappropriated or where any Gaon Sabha or local authority is entitled to take or retain possession of any land under the provisions of this Act and such land is occupied otherwise than in accordance with the provisions of this Act, the Land Management Committee or local authority, as the case may be, shall inform the Assistant Collector concerned in the manner prescribed.

(2) Where from the information received under sub-section (1) or otherwise, the Assistant Collector is satisfied that any property referred to in sub-section (1) has been damaged or misappropriated or any person is in occupation of any land, referred to in that sub-section, in contravention of the provisions of this Act, he shall issue notice to the person concerned to show cause why compensation for damage, misappropriation or wrongful occupation as mentioned in such notice be not recovered from him or, as the case may be, why he should not be evicted from such land.

(3) If the person to whom a notice has been issued under subsection (2) fails to show cause within the time specified in the notice or within such extended time not exceeding thirty days from the date of service of such notice on such person, as the Assistant Collector may allow in this behalf, or if the cause shown is found to be insufficient, the Assistant Collector may direct that such person may be evicted from the land and may for that purpose, use, or cause to be used such force as may be necessary and may direct that the amount of compensation for damage, misappropriation or wrongful occupation be recovered from such person as arrears of land revenue.

(4) If the Assistant Collector is of opinion that the person showing cause is not guilty of causing the damage or misappropriation or wrongful occupation referred to in the notice under sub-section (2) he shall discharge the notice.

(4-A) Any person aggrieved by the order of the Assistant Collector under sub-section (3) or sub-section (4) may, within thirty days from the date of such order, prefer a revision before the Collector on the grounds mentioned in clauses (a) to (e) of Section 333 ."

5. Sub-section (4F) of Section 122B is in the following terms:

"(4F) Notwithstanding anything in the foregoing sub-sections, where any agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe is in occupation of any land vested in a Gaon Sabha under Section 117 (not being land mentioned in Section 132) having occupied it from before May 13, 2007 and the land so occupied together with land, if any, held by him from before the said date as bhumidhar, sirdar or asami, does not exceed 1.26 hectares (3.125 acres), then no action under this section shall be taken by the Land Management Committee or the Collector against such labourer, and he shall be admitted as bhumidhar with non-transferable rights of that land under Section 195 and it shall not be necessary for him to institute a suit for declaration of his rights as bhumidhar with non-transferable rights in that land".

Explanation.--The expression "agricultural labourer" shall have the meaning assigned to it in Section 198 ."

6. Sub-section (4F) of Section 122B has been construed and interpreted in a judgment of the Hon'ble Supreme Court in Manorey @ Manohar Vs. Board of Revenue (U.P.) and Others, . The Supreme Court held that sub-section (4F) carves out an exception from the provisions of sub-sections (1), (2) & (3) under which a procedure for eviction of unauthorized occupants of land vested in the Gram Sabha is provided. The exception which is carved out by sub-section (4F) is in favour of agricultural labourers belonging to Scheduled Castes and Schedule Tribes having land below the stipulated ceiling of 3.125 acres. Where the conditions of sub-section (4F) are fulfilled, the legislature has provided that no action to evict such person shall be taken and he shall be deemed to have been admitted as Bhumidhar with non transferable rights over the land.

7. The Supreme Court has held thus:

"8. First, the endeavour should be to analyze and identify the nature of the right or protection conferred by sub-section (4F) of Section 122-B . Sub-sections (1) to (3) and the ancillary provisions upto sub-section (4E) deal inter alia, with the procedure for eviction of unauthorized occupants of land vested in Gaon Sabha. Sub-section (4F) carves out an exception in favour of an agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe having land below the ceiling of 3.125 acres. Irrespective of the circumstances in which such eligible person occupied the land vested in Gaon Sabha (other than the land mentioned in Section 132), no action to evict him shall be taken and moreover, he shall be deemed to have been admitted as a Bhumidhar with non transferable rights over the land, provided he satisfies the conditions specified in the subsection. According to the findings of the Sub-Divisional Officer as well as the appellate

authority, the appellant does satisfy the conditions. If so, two legal consequences follow. Such occupant of the land shall not be evicted by taking recourse to subsection (1) to (3) of Section 122B . It means that the occupant of the land who satisfies the conditions under sub-section (4F) is entitled to safeguard his possession as against the Gaon Sabha. The second and more important right which sub-section (4F) confers on him is that he is endowed with the rights of a Bhumidhar with no-transferable rights. The deeming provision has been specifically enacted as a measure of agrarian reform, with a thrust on socio-economic justice. The statutorily conferred right of Bhumidhar with non-transferable rights finds its echo in clause (b) of Section 131 . Any person who acquires the rights of Bhumidhar under or in accordance with the provisions of the Act, is recognized under Section 131 as falling within the class of Bhumidhar. The right acquired or accrued under sub-section (4F) is one such right that falls within the purview of Section 131(b) ."

8. The Supreme Court also held that sub-section (4F) is not merely a shield to protect the possession of a person who fulfills the conditions in sub-section (4F) but it also confers a positive right of being recognized as Bhumidhar on the occupant satisfying the conditions and criteria laid down in the sub-section.

9. The Supreme Court has held thus:

"Thus, sub-section (4F) of Section 122-B not merely provides a shield to protect the possession as opined by the High Court, but it also confers a positive right of Bhumidhar on the occupant of the land satisfying the criteria laid down in that sub-Section....When once the deeming provision unequivocally provides for the admission of the person satisfying the requisite criteria laid down in the provision as Bhumidhar with non-transferable rights under Section 195 , full effect must be given to it. Section 195 lays down that the Land Management Committee, with the previous approval of the Assistant Collector in-charge of the Sub Division, shall have the right to admit any person as Bhumidhar with non-transferable rights to any vacant land (other than the land falling under Section 132) vested in the Gaon Sabha. Section 198 prescribes "the order of preference in admitting persons to land under Sections 195 and 197 ". The last part of sub-section (4F) of Section 122-B confers by a statutory fiction the status of Bhumidhar with non-transferable rights on the eligible occupant of the land as if he has been admitted as such under Section 195 . In substance and in effect, the deeming provision declares that the statutorily recognized Bhumidhar should be as good as a person admitted to Bhumidhari rights under Section 195 read with other provisions. In a way, sub-section (4F) supplements Section 195 by specifically granting the same benefit to a person coming within the protective umbrella of that sub-section. The need to approach the Gaon Sabha under Section 195 read with Section 198 is obviated by the deeming provision contained in subsection (4F). We find no warrant to constrict the scope of deeming provision."

10. Sub-section (4A) of Section 122B provides a remedy of revision where an order has been passed by the Assistant Collector under sub-sections (3) or (4) of

Section 122B . Sub-section (3) envisages an order of eviction by the Assistant Collector where the person to whom a notice has been issued under sub-section (2) has failed to show cause or if the cause shown is found to be insufficient. Sub-section (3) also provides for a direction that compensation be awarded in respect of any damage, misappropriation or wrongful occupation; the amount being recoverable as arrears of land revenue. Sub-section (4) provides for the discharge of a notice issued under sub-section (2) where the Assistant Collector is of the opinion that the person showing cause is not guilty of causing damage, misappropriation or wrongful occupation. The remedy of a revision under sub-section (4A) of Section 122B is available only in respect of an order which is passed under sub-sections (3) or (4). Sub-section (4F) of Section 122B is an independent provision by which an exception has been carved out in favour of agricultural labourers belonging to Scheduled Castes or Scheduled Tribes subject to the satisfaction of the conditions which have been imposed by the statute. No remedy of a revision is provided in respect of an order under Section 122B(4F) .

11. The learned Single Judge was, with respect, in error in coming to the conclusion that the remedy of a revision is available in respect of an order which has been passed by the Assistant Collector under Section 122B(4F) . By the plain terms of the statutory provision made in sub-section (4A), such a remedy has been made available only in respect of an order under sub-sections (3) or (4). The remedy of a revision is a creature of the statute. The revisional authority cannot expand its own jurisdiction where a statutory provision has not provided such a recourse.

12. The matter can be looked at from an additional perspective as well. Section 333 provides for the power of the Board of Revenue or Commissioner or the Additional Commissioner to call for the record of any suit or proceeding decided by any court subordinate.

13. Section 333 provides as follows:

"333. Power to call for cases.--(1) The Board or the Commissioner or the Additional Commissioner may call for the record of any suit or proceeding other than proceeding under sub-section (4-A) of Section 198 decided by any court subordinate to him in which appeal lies or where an appeal lies but has not been preferred, for the purpose of satisfying himself as to the legality or propriety of any order passed in such suit or proceeding and if such subordinate court appears to have;

(a) exercised a jurisdiction not vested in it by law; or

(b) failed to exercise a jurisdiction so vested; or

(c) acted in the exercise of jurisdiction illegally or with material irregularity;

the Board or the Commissioner or the Additional Commissioner, as the case may be, may pass such order in the case as he thinks fit.

(2) If an application under this section has been moved by any person either to the Board or to the Commissioner or to the Additional Commissioner, no further application by the same person shall be entertained by any other of them."

14. The remedy of a revision under Section 333 is available in a matter which is decided by a court subordinate to the Board, Commissioner or Additional Commissioner in which an appeal lies or where an appeal lies but has not been preferred.

15. Section 331 is in the following terms:

"331. Cognizance of suits, etc. under this Act.--(1) Except as provided by or as under this Act no court other than a court mentioned in Column 4 of Schedule II shall, notwithstanding anything contained in the Civil Procedure Code, 1908 (V of 1908), take cognizance of any suit, application or proceedings mentioned in Column 3 thereof or of a suit, application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or application:

Provided that where a declaration has been made under Section 143 in respect of any holding or part thereof, the provisions of Schedule II insofar as they relate to suits, applications or proceedings under Chapter VIII shall not apply to such holding or part thereof.

Explanation.--If the cause of action is one in respect of which relief may be granted by the revenue court, it is immaterial that the relief asked for from the civil court may not be identical to that which the revenue court would have granted.

(1-A) Notwithstanding anything in sub-section (i), an objection, that a court mentioned in Column 4 of Schedule II, or, as the case may be, a civil court, which had no jurisdiction with respect to the suit, application or, proceeding, exercised jurisdiction with respect thereto shall not be entertained by any appellate or revisional court unless the objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(2) Except as hereinafter provided no appeal shall lie from an order or decree passed under any of the proceedings mentioned in Column 3 of the Schedule aforesaid:

(3) An appeal shall lie from any decree or from an order passed under Section 47 or an order of the nature mentioned in Section 104 of the Code of Civil Procedure, 1908 (V of 1908) or in Order 43, Rule 1 of the First Schedule to that Code passed by a court mentioned in Column No. 4 of Schedule II to this Act in proceedings mentioned in Column 3 thereof to the court or authority mentioned in Column No. 5 thereof.

(4) A second appeal shall lie on any of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (V of 1908) from the final order or decree, passed in an appeal under subsection (3), to the authority, if any, mentioned against it in Column 6 of the Schedule aforesaid."

16. The second schedule provides inter alia sections, a description of proceedings, courts of original jurisdiction and courts of first and second appeal. No appeal is provided in respect of an order passed under Section 122B , including against an order under Section 122B (4F) . Consequently, it is clear beyond the shadow of a doubt that a remedy of a revision would not be available under Section 333 against an order which has been passed under sub-section (4F) of Section 122B .

17. For these reasons, we are of the view that the learned Single Judge was in error in dismissing the writ petition on the ground of alternate remedy.

18. We, accordingly, allow the special appeal and set aside the impugned judgment of the learned Single Judge dated 25 August 2015. Writ Petition No. 4794 (M/S) of 2015 shall, accordingly, stand restored to the file of the learned Single Judge for disposal afresh on merits.

19. The special appeal is, accordingly, disposed of. There shall be no order as to costs.

1SDO

2Act